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U.S. Citizenship  
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FILE: EAC 98 029 52752 Office: VERMONT SERVICE CENTER Date:

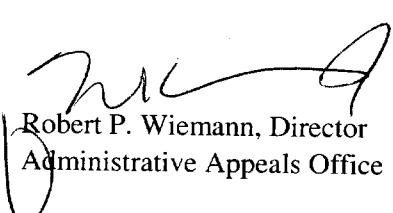
IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center revoked the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed the director's decision. The petitioner filed a motion to reopen or reconsider in May 2000 with the AAO. The AAO issued a decision on October 23, 2001 and affirmed the previous AAO decision. The matter is again before the AAO on motion to reopen. The motion will be dismissed.

The petitioner imports and exports silk products. It seeks to employ the beneficiary as a vice president and financial controller. The director revoked an approval of a petition extending the beneficiary's status on the basis that the beneficiary was not eligible for the benefit sought. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity. The AAO affirmed this determination on appeal and on the subsequent motion.

In this second motion to reopen, counsel refers to evidence that was previously submitted. Counsel does not furnish any new facts to be provided in the reopened proceeding. It is noted that no additional evidence has been received into the record. Therefore, the record is considered complete.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup>

On motion, counsel for the petitioner refers to the October 23, 2001 decision of the AAO, which affirmed the previous decisions of the director and the AAO. In support of the petitioner's contention that the beneficiary will be performing in a primarily executive or managerial capacity, counsel states "[p]lease refer to our correspondence dated September 27, 1999 . . . ." and cites to various page numbers of the correspondence. Additionally, counsel refers to correspondence that the petitioner previously submitted dated May 21, 2000.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). The petitioner's motion does not meet applicable requirements. Counsel does not state the new facts to be proved. Instead, counsel refers the AAO to correspondence previously submitted and reviewed by the AAO.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

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<sup>1</sup> The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion is dismissed.